

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
HELENA DIVISION

SHAWN HOWARD WELLER,

Petitioner,

vs.

MICHAEL FLETCHER, ATTORNEY  
GENERAL OF THE STATE OF  
MONTANA,

Respondents.

Cause No. CV 17-59-H-DLC-JTJ

ORDER AND FINDINGS AND  
RECOMMENDATION OF U.S.  
MAGISTRATE JUDGE

The case comes before the Court on Petitioner Shawn Howard Weller's "Motion for 45 Days Extension in Filing a Writ of Habeas Corpus." (Doc. 1.) Weller has also moved this Court to proceed in forma pauperis. (Doc. 2.)

The Court is familiar with Mr. Weller and takes notice of the fact that he has been granted leave to proceed in forma pauperis in other matters. Mr. Weller's request in this case will, likewise, be granted.

This is also not the first time that Weller has attempted to prospectively extend a filing date. *See e.g. Weller v. State*, CV-16-60-H-DLC-JTJ, Find. and Rec. (filed July 18, 2016). As Weller was previously informed, Section 2254 does not authorize federal courts to prospectively extend or toll the limitations period. Further, this Court is not in a position to make a determination as to whether or not a petition is timely filed; such determination can be made only after the actual

filing of the petition. Under the general principles of the “case or controversy” requirement of Article III, Section 2, of the United States Constitution, a federal court may not issue advisory opinions. *See e.g., Princeton University v. Schmid*, 455 U.S. 100, 102 (1982). Because Mr. Weller has not yet filed his petition, a determination as to its timeliness cannot be made.

Mr. Weller’s request for an extension should be denied and the matter should be dismissed without prejudice. If and when Mr. Weller files a petition, the Court will open a new case.

A certificate of appealability should be denied because reasonable jurists could not find grounds to doubt the jurisdictional ruling. *See, Lambright v. Stewart*, 220 F. 3d 1022, 1026 (9<sup>th</sup> Cir. 2000).

Based on the foregoing, the Court enters the following:

### **ORDER**

Mr. Weller’s Motion for Leave to Proceed in Forma Pauperis (Doc. 2) is GRANTED.

### **RECOMMENDATION**

1. Mr. Weller’s Motion for 45 Days Extension (Doc. 1) should be DENIED and the matter DISMISSED without prejudice.

2. The Clerk of Court should be directed to enter, by separate document, a judgment in favor of Respondents and against Petitioner.

3. A certificate of appealability should be DENIED.

**NOTICE OF RIGHT TO OBJECT  
TO FINDINGS & RECOMMENDATION  
AND CONSEQUENCES OF FAILURE TO OBJECT**

Mr. Weller may object to this Findings and Recommendation within 14 days.<sup>1</sup> 28 U.S.C. § 636(b)(1). Failure to timely file written objections may bar a de novo determination by the district judge and/or waive the right to appeal.

Mr. Weller must immediately notify the Court of any change in his mailing address by filing a “Notice of Change of Address.” Failure to do so may result in dismissal of this action without notice to him.

DATED this 30th day of May 2017.

/s/ John Johnston  
John Johnston  
United States Magistrate Judge

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<sup>1</sup> As this deadline allows a party to act within 14 days after the Findings and Recommendation is “served,” Fed. R. Civ. P. 6(d) applies, and three days are added after the time would otherwise expire.